

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2969 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATHUJI DALAJI THAKOR

Versus

MULJIBHAI CHAUDHARY

Appearance:

MR MEHUL SHARAD SHAH for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MR RR MARSHALL for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 15/12/2000

ORAL JUDGEMENT

Heard Ld.Advocate Shri Mehul Shah appearing for
the appellant and Mr.R.R.Marshall appearing for
respondent No.3. Respondents Nos 1 and 2 though served,

have not appeared.

2. Being aggrieved by the order passed below Exh.5 in Motor Accident Claim Petition No.284/98 by the Motor Accident Claims Tribunal (Auxi), Mehsana, the appellant has approached this court.

3. The facts pertaining to the present appeal are as under:

3.1 The appellant met with an accident on 23.2.1998. It is the case of the appellant that he was admitted in the hospital of Dr.Kamlesh T.Gurjar, an Orthopaedic Surgeon on 23.2.1998. The appellant was in the hospital as an indoor patient till 4.3.1998 and on 4.3.1998, Dr.Kamlesh Gurjar gave a certificate to the effect that the appellant was admitted in his hospital as an indoor patient from 23.2.1998 to 4.3.1998 and he also referred to the nature of injury suffered by the appellant in the certificate. It has also been stated in the certificate given by the concerned doctor that on account of vehicular accident occurred on 23.2.1998 the appellant was admitted in the hospital.

3.2 Upon filing MACP No.284/98, the appellant had also submitted an application below Exh.5 under section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") as he had suffered injury of permanent nature. So as to substantiate his case the appellant has placed on record a certificate dated 25.11.1998 issued by the Gujarat Orthopaedic & Dental Hospital. Relevant portion of the said certificate reads as under:

"Disability 16%"

Nothing has been said about the nature of the disability.

The application below Exh.5 came to be rejected by the tribunal by order dated 25.9.2000. The learned judge has observed in the order that the accident took place on 23.2.1998 and FIR was filed on 4.3.98 and the panchnama was drawn on 5.3.98. The learned judge has also observed that that the applicant has not given any details with regard to the hospital where he had taken the treatment. Under the circumstances he did not believe the case of the appellant and therefore the application was rejected.

4. At the time of hearing of this appeal, Ld.Advocate Shri Mehul Shah has submitted that the certificate dated 4.3.98 issued by Dr.Kamlesh Gurjar clearly reveals that the appellant was admitted in his

hospital on 23.2.98 and was discharged from the hospital on 4.3.1998. Certificate with regard to injury and period of stay in the hospital is normally given at the time of discharge. In the circumstances, according to Mr.Shah the certificate was dated 4.3.98, the day on which the appellant was discharged from the hospital. The fact with regard to discharge of the appellant from the hospital is clearly revealed from the certificate. It is submitted by the learned advocate that the learned judge has committed an error by not relying on the certificate dated 4.3.98 issued by Dr.Kamlesh Gurjar.

5. It has been further submitted by the learned advocate for the appellant that during the pendency of the proceedings respondent No.1 driver of the vehicle, who had caused injury to the appellant, has also been chargesheeted on 17.4.98. Copy of the chargesheet was submitted to this court for its perusal. However, since the said chargesheet is not on record, this court would not like to look into the said chargesheet.

6. On the other hand, Mr.R.R.Marshall appearing for respondent No.3-Insurance Company has submitted that though his counter-part appearing before the Tribunal had not objected to payment of compensation under the provisions of Section 140 of the Act, according to him, the appellant can not be given compensation on the basis of the certificate dated 25.11.1998 issued by Gujarat Orthopaedic and Dental hospital. He has submitted that the said certificate does not say that the injury suffered by the appellant is of permanent nature.

7. It has been submitted by Mr.Marshall that in fact the order passed by the tribunal rejecting the application under section 140 of the Act is just and proper.

8. Looking to the fact that the certificate dated 4.3.98 was given on the date on which the patient was discharged from the hospital, there was no reason to disbelieve the certificates because normally such certificates are given at the time when the patients are discharged. It has been submitted by Mr.Marshall that from the certificate issued by Gujarat Orthopaedic & Dental Hospital it is not clear whether the appellant was having any permanent disability.

9. Looking to the facts and circumstances of the case, I do not see any reason to interfere with the order passed by the tribunal at this stage especially because it has not been established that the appellant was having

permanent disability. Moreover, in view of the fact that the appellant has not received any amount, it would be just and proper to direct the tribunal to disposed of MACP No.284/98 as soon as possible and preferably within four months from today. Learned advocates for the parties have assured this court that their clients shall extend their cooperation to the tribunal so that the entire claim petition can be disposed of within 4 months from today.

10. If the claim petition is not disposed of within four months from today, it would be open to the appellant to file another application under section 140 of the Act and it would be open to the tribunal to reconsider the request of the appellant with regard to the payment of compensation under section 140 of the Act without being influenced by the fact that the application of the appellant was rejected on 25.9.2000 and the application shall be considered on merits and after considering the material on record of the Tribunal at the relevant time.

11. Subject to the above directions, the appeal stands disposed of as dismissed with no order as to costs.

15.12.2000 (A.R.DAVE,J)